#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS MCALLEN DIVISION

UNITED STATES OF AMERICA	§		
	§		
Plaintiff,	§		
	§		
v.	§	CASE NO.	7:08-CV-177
	§		
3.17 ACRES OF LAND, MORE OR	§		
LESS, SITUATED IN STARR COUNTY,	§		,
TEXAS; AND JUAN MONTALVO,	§		
ET AL.,	§		
	§		
Defendant.	§		

# UNITED STATES OF AMERICA'S RESPONSE TO THE DISTRICT COURT'S ORDER FOR A CASE STATUS UPDATE

**COMES NOW** the United States of America (hereinafter "United States"), and in response to the District Court's October 26, 2018, Order to inform the Court on the status of the case and intended future action:

#### Summary

This case involves a large number of landowners. The United States has not been able to reach agreements with any landowners about the proper amount of just compensation, and the United States has not been able to locate all potentially interested parties. The United States needs to serve notice by publication, then it will need to proceed to a trial to obtain a determination from the Court about the amount of just compensation.

#### **Current Status**

On June 21, 2008, the United States initiated this proceeding with the filing of a declaration of taking and complaint. [Doc. Nos. 1 and 2]. The United States deposited estimated just

Page 1 of 5 United States' Response to Court's Order for a Status Update compensation in the amount of \$10,900 on June 25, 2009, and that deposit caused title to certain interests in real property to vest in the United States by operation of the Declaration of Taking Act, 40 U.S.C. § 3114.

This case involved the taking of both fee interests and easements:

- (a) Tract RGV-RGC-1104 0.707 acres of fee interest;
- (b) Tract RGV-RGC-1082 0.172 acres of fee interest;
- (c) Tract RGV-RGC-1081 0.181 acres of fee interest;
- (d) Tract RGV-RGC-1080 0.185 acres of fee interest;
- (e) Tract RGV-RGC-1079 0.031 acres of fee interest;
- (f) Tract RGV-RGC-1078 0.233 acres of fee interest;
- (g) Tract RGV-RGC-1077 0.282 acres of fee interest;
- (h) Tract RGV-RGC-1079E an 0.690-acre temporary work area easement;
- (i) Tract RGV-RGC-1078E an 0.760-acre temporary work area easement;
- (j) Tract RGV-RGC-1077E an 0.194-acre temporary work area easement; and [Doc. No. 23]. Altogether, the United States took 1.791 acres of fee interests in real property and temporary work easements of 1.644 acres. A map of the area appears on the next page:

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The United States has named a significant number of potentially interested parties, including at least two for whom the United States cannot locate a valid mailing address. Because the United cannot locate all potentially interested parties, the United States will need to publish notice of this taking pursuant to Fed. R. Civ. P. 71.1(d)(3)(B).

#### **Intended Future Action**

The United States intends to (a) publish notice pursuant to Fed. R. Civ. P. 71.1(d)(3)(B) then, after completing service by publication, (b) ask the Court to enter default pursuant to Fed. R. Civ. P. 55(a) against the parties who do not answer, then (b) request that the Court set this matter for trial. All interested parties will be entitled to participate in the trial, even those against whom the Court enters default. Fed. R. Civ. P. 71.1(e)(3).

[remainder of page intentionally left blank]

Page 3 of 5 United States' Response to Court's Order for a Status Update Due to the cost of publishing notice, the United States is waiting until it is able to publish notice for multiple cases at the same time. This is necessary in order to economically prosecute the Border Fence-related takings case. The United States intends to notify the Court after it has been able to publish notice.

Dated: December \_\_7\_\_\_, 2018.

Respectfully submitted,

RYAN K. PATRICK, United States Attorney

By: s/ Richard A. Kincheloe

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Attorney for the United States of America

### **Certificate of Service**

The undersigned certifies that he served the foregoing Response to the Court's Request for Status Update on the parties remaining in this case on December \_\_7\_\_\_, 2018, by first-class U.S. mail, postage prepaid.

s/ Richard A. Kincheloe
Richard A. Kincheloe
Assistant United States Attorney

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## **Certificate of Agreement**

The undersigned potentially interested parties have reviewed the United States' Response to Court's Order for a Status Update and agree with the United States' evaluation of the status of the case.

Sylvia M. Ramirez

Noelia M. Munoz